IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2735 of 1997

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEELKAMAL SYNFABS PVT LTD - Petitioner(s)

Versus

SUNIL R PATEL - Respondent(s)

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Appearance :

NANAVATI & NANAVATI for Petitioner No(s).: 1.

MR RC PATHAK for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 20/07/2005

ORAL JUDGMENT

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1. This petition is directed against the judgment and award dated 12th April, 1996 passed by the Labour Court, Ahmedabad in Reference [L.C.A.] No. 544 of 1989, whereby the Labour Court has directed the petitioner to reinstate the respondent in service with full back wages.

2. The short facts of the case are that the respondent was working as a Helper with the petitioner Company. It is the case of the petitioner that due to financial crisis and stiff competition in the business, the petitioner Company decided to retrench the services of few workers including the respondent. Therefore, the petitioner Company on 1st February, 1989 served the order of termination on account of retrenchment upon the respondent and other eight workmen in accordance with the provisions laid down under Section 25F of the Industrial Disputes Act, 1947.

2.1. It is the case of the petitioner Company that the respondent along with other workmen accepted the said order with an objection that they will collect the accounts later on. Since the respondent and other workmen did not remain present for collecting their dues, the petitioner Company sent a letter dated 2nd February, 1989 along with the copy of the Notice as well as the cheque for the amount of Rs.1774.65. Pursuant to that the respondent preferred an application for wages for the month of January, 1989 before the Payment of Wages Authority being Application No. 174/89 and 175/89.

However, during the proceedings though the petitioner Company had shown his willingness to settle the legal dues, the respondent and other workmen had decided to accept the wages for the month of January, 1989 and they were paid as such in cash before the said authority.

2.2. However, the respondent along with other nine workmen through their Union raised an industrial dispute which was ultimately referred to the Labour Court for adjudication. The Labour Court after appreciating the materials produced before it, passed the impugned award. Hence, this petition.

3. Mr. D.G. Shukla learned counsel for the petitioner has contended that the Labour Court has committed an error in ordering reinstatement with back wages *inasmuch* as the Labour Court has erred in not appreciating the fact that the action of retrenchment of respondent and other workmen was in accordance with the provisions of Section 25F of the Industrial Disputes Act, 1947. Mr. Shukla has further contended that the employee himself has deposed before the Labour Court that due to less work the petitioner has retrenched the respondent and other workmen.

3.1. In support of his contention Mr. Shukla has placed reliance on the decision of the Apex Court in the case of **M/s. Parry & Co. Ltd., v. P.C. Pal, Judge of the Second Industrial Tribunal, Calcutta & Ors., reported in A.I.R. 1970 S.C. p. 1334**, more particularly, para 5, which reads as under :-

> "However, the Union challenged not only the legality and propriety of the retrenchment but also the propriety and reasonableness of the said policy decision alleging absence of good reason for relinquishing agencies and further alleging that an artificial surplusage was caused for weakening the union and parochial considerations. The Tribunal thought that these questions required elucidation by the Company. It held that though 11 agencies in all in Calcutta were given up, since two of them were given up on July 1, 1961 and the third on August 1, 1961, only 8 agencies were given up before the notice of retrenchment. The Tribunal however, failed to observe that notice of giving up these three agencies were served by the Company as early as possible."

3.2. Mr. Shukla has further contended that the Labour Court has erred in considering the fact that though the Company had along with the order of termination on account of retrenchment offered the

payment of legal dues to the respondent along with other workmen, the respondent had denied the same. In support of this contention he has placed reliance on the decision of the **Andra Pradesh High Court in the case of E.I.D. Parry (India) Ltd., v. Labour Court, Guntur reported in 1992 LAB I.C. p. 278** more particularly para 13 which reads as under :-

> “Admittedly, in this case, three months' pay in lieu of notice has been sent to the respondents, but they have not received the same. It is now well settled that giving of three months' notice or tendering wages in lieu of notice is enough and refusal of the notice or the pay in lieu of notice by the workman does not invalidate the notice or tender of payment [Vide Indian Oxygen Ltd. V. Narayana Bhoumik, (1968) 17 Fac LR 214). It follows that merely because the respondents have declined to receive the notice and wages in lieu of notice sent by registered post, it cannot be said that the workmen have not been given notice. Therefore, the first condition is complied with.”

4. Mr. R.C. Pathak learned counsel for the respondent has supported the award of the Labour Court and has submitted that since the legal dues were not paid on the same day there is breach of Section 25F of the Industrial Disputes Act, 1947.

5. I have heard the learned counsel for the parties and have perused the materials produced on record. While admitting the matter on 9th April, 1997, this Court had stayed the operation of the impugned award qua back wages subject to compliance of Section 17B of the Industrial Disputes Act. It is stated by learned counsel for the petitioner that the Company is closed. Therefore, the only question which is now required to be considered by this Court is with regard to back wages only. In the impugned award, the Labour Court has not given any cogent reasons as to on what basis it has awarded full back wages to the respondent. Moreover in view of the principle laid down by the Apex Court in the case of **General Manager, Haryana v. Rudhan Singh reported in J.T. 2005 (6) S.C., p.137,** wherein it has been held that an order for payment of back wages should not be passed in a mechanical manner, but a host of factors are to be taken into consideration before passing any such order, the order awarding back wages is required to be quashed and set aside.

6. In the premises aforesaid, the petition is partly allowed. The award dated 12th April, 1996 passed by the Labour Court, Ahmedabad in Reference [L.C.A.] No. 544

of 1989 qua back wages is quashed and set aside and rest of the award is confirmed. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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